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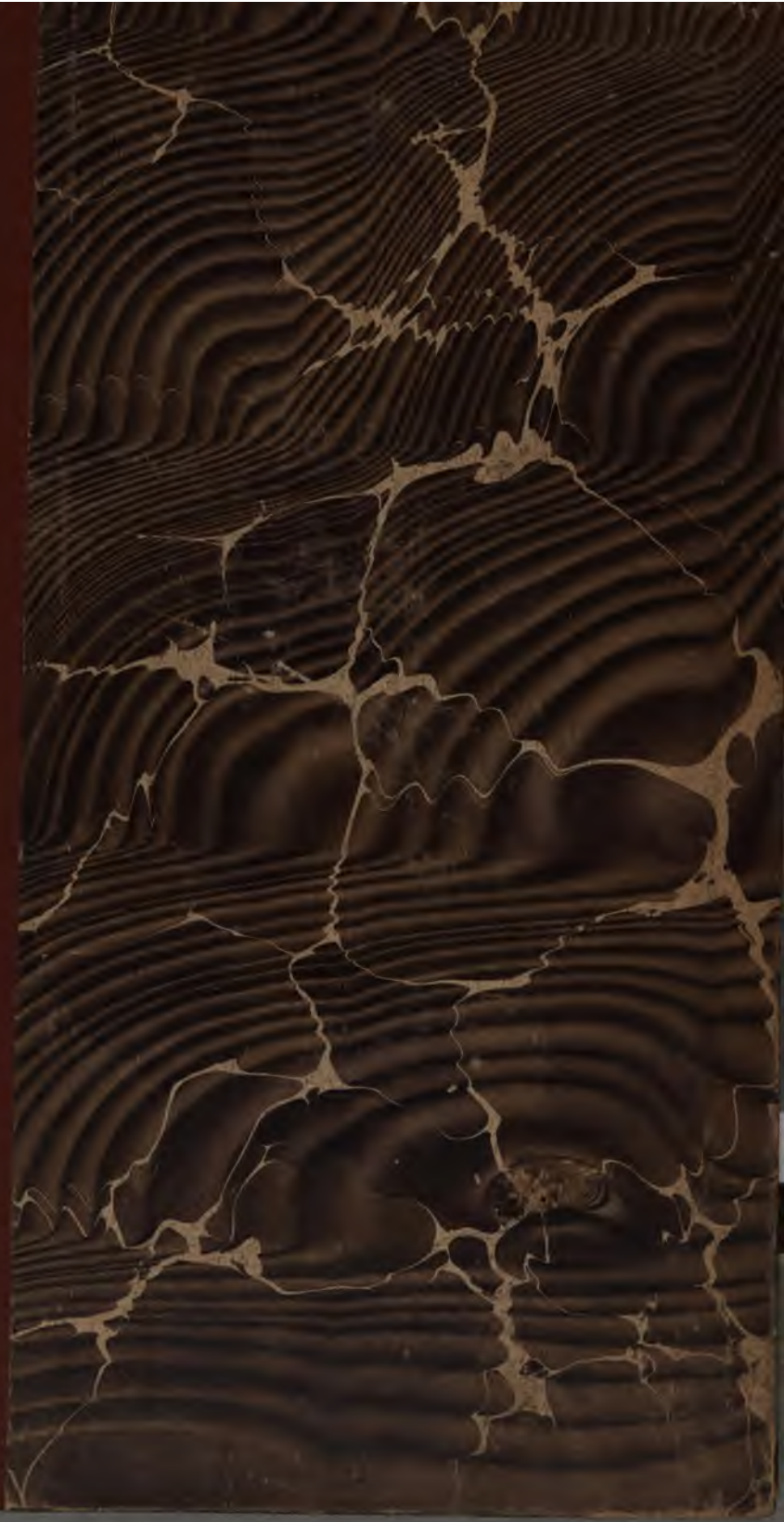
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Scott - An Appeal to the People - 1840



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AN APPEAL
TO THE PEOPLE,
FROM THE
Decision of the Senate,
IN THE CASE OF
THE REMOVAL OF THE JUSTICES OF
THE MARINE COURT,

BY JOHN B. SCOTT,
Late Justice of the Marine Court.

NEW YORK:

Printed and Published by Wm. G. Boggs, 27 Pine Street.

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1859, April 30.

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Hon. John A. Dix,
of New York, N. Y.

A P P E A L.

FELLOW CITIZENS:

On the 9th of May last, the Albany Argus announced the removal of the Justices of the Marine Court as follows:

"High-handed intolerance and proscription."

"John B. Scott and Effingham Schieffelin, Justices of the Marine Court in the City of New York, were on Friday removed from office by the Senate, on the recommendation of the Governor, under circumstances which we venture to say can find no parallel in point of injustice and party intolerance, in the scenes which characterized the "reign of terror," and scarcely in those of the English Star Chamber.

"No charges against those officers accompanied the recommendation of the Executive for their removal, nor a single word as to the grounds upon which such recommendation was based. A resolution calling upon the Governor for the causes which rendered such removal necessary or proper, was voted down by the federal majority. Another resolution, inquiring whether any charges had been preferred against those officers, and if so, whether they had been furnished with copies of them, shared the same fate. In the absence of all information from the Executive, upon which to predicate the action of the Senate, an *ex parte* affidavit of a single individual, was read by Mr. Verplanck, impeaching the conduct of the two Justices named, in relation to the administration of the naturalization laws. In vain was it urged that all law, precedent and justice, required that the accused should at least be notified of their impeachment, and confronted with their accuser: in vain was the injustice of thus impugning the official character of Magistrates, without affording them an opportunity to introduce rebutting testimony, held up to view: in vain did the democratic senators assure the majority that if the charges contained in the affidavit, *ex parte* as it was, were not disproved, they would themselves vote for the removal. Nothing could stay for an hour, the

stroke of the federal axe, and accordingly Messrs. Scott and Schieffelin were ejected from their offices before the expiration of their term of service, without the slightest opportunity of vindicating their characters from the aspersions thus thrown upon them."

On the 20th of May, the Albany Evening Journal, a federal paper, perceiving the public indignation on this subject, gave a statement of the transaction, hereunto annexed. It will be perceived that the Journal does not deny the statement of the Argus, but discloses additional circumstances rendering the injustice of the Senate more atrocious.

The first fact that distinctly appears is, the recommendation of the Governor to remove the Justices of the Marine Court; this was referred to Messrs. Tallmadge, Verplanck and Furman:—"That Mr. Tallmadge, on the part of the Committee, recommended the removal, stating that the *grounds of it appeared perfectly satisfactory* to the Committee." I ask what grounds appeared perfectly satisfactory? None were presented by the Governor to the Senate. The Committee had the grounds before them, in other words, the charges, made by the Governor, which were not to be laid before the Senate. And was this the reason why Mr. Paige's resolution, *calling upon the Governor for specific charges, was rejected by a party vote*? He well knew that if he laid his charges before the Senate, the Judges of the Marine Court might have some slight chance of trial; in order to prevent this, his grounds were laid before the Committee, and they made a *general* report "that the grounds of it (his recommendation) appeared perfectly satisfactory."

If the Governor did not lay his charges before the Committee, how did they procure them on which they passed judgment "that they were perfectly satisfactory?" Did they hold a secret session to examine witnesses and take *ex parte* testimony without authority from the Senate? Can there be any doubt that the Governor and the Committee resolved to remove the judges at all events? They expected to be met on constitutional grounds, and therefore it was necessary to get up some plausible pretext to carry out the farce.

The most remarkable act was, that, while they professed to investigate and examine, they prejudged the accused—the Governor having nominated our successors at the same time that he recommended our removal. It was an audacious and hollow pretence on the part of Mr. Verplanck to tell the Senate "that Governor Seward made no removals except for

special cause." Why did he not furnish the accused with a copy of the affidavit and the charges which he and his Committee had before them? Governor Clinton always pursued this course, even where an office was held during his pleasure. Mr. Van Buren, lately, in the case of Consul Trist, furnished him with a copy of the charges, and he was heard in his defence.

Messrs. Hunter and D. S. Dickinson called upon the Committee for further information. Mr. Verplanck, one of the Committee, said "he would not himself assent as a Senator to such a removal on party grounds; this was not such a removal; this was for great and just cause," and repeated "that this was *not a removal upon party grounds*, but a high *judicial sentence for notorious public offences*. This example of such a removal would have a most salutary effect in purifying the naturalization laws." It appears he read an affidavit to the Senate, containing specific charges, and what did not appear by the affidavit, he was determined to supply by hearsay testimony, by what he said was "open and notorious, *not to require evidence*," but when Messrs. Hunter, Ely, Paige and Vandyck, held that the Judges were entitled to have notice of the charges, and should be allowed to repel the charges thus presented against them, and made a motion to that effect, this "most righteous judge" and Senator, evidently became uneasy, least, by a possibility, "the high judicial sentence" which he had decided on in the Committee, (for what else could he allude to by this language,) might be reversed if the accused should have an opportunity of being heard in their defence. He makes great efforts to prevent this; he hypocritically asserts "that Governor Seward had made no removals of officers *except for special cause*, of those who held for a term of years, but subject to the pleasure of the Governor and the Senate," and yet, when the Governor is called upon for special causes, the Senator and his federal associates declare he shall not give the causes to the Senate; they rejected the motion, and decided that the Judges of the Marine Court should *not* be furnished with a copy of the charges against them, and *that they should not be heard in their defence*. After the judgment was passed upon us, and the injunction of secrecy removed, why is it that my friends or myself have been unable to procure a copy of the affidavit, which, by a resolution of the Senate, was ordered to be filed, or of the journals of the Senate up to this

time, though frequent applications have been made to Mr. Andrews, the Clerk.

The motion to file the affidavit was opposed by Mr. Verplanck. He went so far as to put the affidavit in his pocket, declaring it was his private property, and that it did not belong to the Senate. Whether it ever left his pocket, or is now on file, I, after the most diligent inquiry, have been unable to learn. If the Evening Journal's report of the contents of the affidavit is correct, I do not wonder that his friends should have some fears for this wholesale swearer. Why did they not publish his name, his residence, and the name of the officer before whom the affidavit was made?

I have proved, by the subjoined testimony, that the contents of the affidavit read by Mr. Verplanck, and the statements made in his speech, as reported, are utterly false. The secret villain may escape for a time, but his mask-holder should be held up to the scorn and contempt of all honest men.

I shall now discuss the right of removal. The first question that presents itself is, have the Governor and Senate, *at their pleasure*, the right to remove the Judges of the Marine Court before the tenure of their offices has expired? The Constitution declares, "when *the duration* of any office is not *prescribed by this Constitution*, it may be declared by law; and if *not so declared*, such office shall be held during the pleasure of the authority making the appointment." Con. Art. 4, sec. 8. This authorizes the Legislature to declare the *duration* of office, and, when so declared, it has the same force and effect as if prescribed in the Constitution.

Under the title "Judicial Officers appointed by the Governor and Senate," vol. 1st, R. S., part 1st, chap. 5th, tit. 4, art. 1st, sec. 10th, they enact as follows: "The Justices of the Marine Court of the City of New York shall hold their offices for five years." By this it would seem conclusive, that the Justices of the Marine Court do not hold their offices during the pleasure of the Authority making the appointment. It may be said that the statute, under the title of "removals" enacts "that officers appointed by the Governor, with the consent of the Senate, (except the Chancellor, the Justices of the Supreme Court, and the Circuit Judges,) may be removed by the Senate, on the recommendation of the Governor." This section is intended to apply only to those cases "not prescribed by the Constitution," and where the *duration* of office is not declared by law; otherwise it would conflict with the Constitution, and the law fixing the duration

of office. The appointment for five years is a contract by the government with the citizen, made under the Constitution and the law, and cannot be rescinded on the part of the Government, except for just cause; nor can the authority making the appointment, (which is only a part of the law-making power,) declare at pleasure the tenure of office, before a repeal of the law.

The intention of the Legislature, in prescribing the duration of office, was to secure the independence of the Judges; the removal from office was to punish them for mal-conduct. If it be admitted that the Judges may be removed by the Senate, on the recommendation of the Governor, it must be *for cause*. The power of removal is not an absolute, unqualified power; it must be controlled by the spirit, as well as the letter of the Constitution in analogous cases; and by the laws and principles engrafted on our free institutions. This may be collected from the following declarations of the Constitution:

"The Governor may remove any Sheriff, Clerk or Register, any time within three years for which he shall be elected; giving such Sheriff, Clerk, or Register a *copy of the charges against him*, and an *opportunity of being heard in his defence*, before such removal shall be made." "Coroners are removable in like manner; "Special Justices and their Clerks, in the City of New York, are removable in like manner as Justices of the Peace; Assistant Justices, also, in like manner." The Act declaring the powers of the Assistant Justices declares also the Justices of the Marine Court to be Justices of the Peace, prescribing the very form of process to be used by the Court: "We command you," &c., "to be and appear before our Justices of the Peace." The Constitution provides that "*no Justice of the Peace shall be removed until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.*" The Judges of County Courts, Recorders of Cities, and Judges of the Superior Court, are removable for *causes to be stated* in the recommendation of the Governor. And still further to show the true spirit and intent of the law, it will be found that even Attornies and Counsellors at Law cannot be stricken from the rolls of any Court of Record, "until a copy of the charges against them shall have been delivered to them, and an opportunity shall have been given to them, of being heard in their defence." Rev. Stat., p. 100, § 30. But suppose that the Senate had power, on the recommendation of the Governor, to remove, at their own will and pleasure—

can they, of their own will and pleasure, inflict disgrace by arbitrary accusation and impeachment; or can they, on mere *ex parte*, or any other evidence, known only to themselves, proceed to try, and pronounce a sentence of condemnation, and thus convert the removal from office, (which, when left to itself, without charges, destroys no character,) into an actual punishment and positive infamy?

The right of impeachment, trial, and condemnation, is inseparable from the right of defence—the fundamental law for securing to every citizen freedom and justice. The usurpation on the part of the Senate is left without a shadow of excuse; it is an innovation on the rights of the Assembly, the popular branch of the Legislature, appointed by the Constitution as the grand Inquest of the State with “the power of impeaching all civil officers of this State for mal and corrupt conduct in office;” the law founded on this section of the Constitution provides that “all impeachments shall be delivered by the Assembly to the President of the Senate, who shall thereupon cause the Court for the trial of impeachments to be summoned. The Court, when summoned, shall forthwith cause the person impeached to appear and answer the charge exhibited against him; and upon his appearance, he shall be entitled to a copy of the impeachment, and a reasonable time to answer the same. He is to be allowed counsel the same as in civil actions; the Court is to appoint a time and place of trial; the President of the Senate and each of the members are sworn, and upon a conviction of the person impeached, judgment may be given that he may be removed from office.” 2 vol. R. S. part 3, chap. 1st, title 1st, art. 2nd, *passim*.

The usurpation of the Senate does not consist alone in the violation of these rules prescribed for the protection of the accused charged with “a public offence,” indeed for the protection of the common felon! but also, in the impenetrable secrecy thrown over their proceedings,—which are not yet disclosed! The charges thus mysteriously prepared, are only known from an unofficial agent, and are authorized no further than that they have not been denied; and just so much of them has been suffered to leak out, as to make the removal ruinous to my fair name and reputation. A judge of a Court of Record—a civil officer invested with immunities proportionate to his own responsibilities, was thus accused, tried and condemned, without notice, and thrust ignominiously from the bench, by a *supersedeas*, the sight of which was to

him the first and only notice of his fate ! So much for the doings of the party, whose loud rebuke of proscription rings in every ear without cessation, and whose mouth is ever full of justice, magnanimity and forbearance !

The most searching eye can find on the adverse side no parallel to this perpetration of political iniquity and persecution. The Star Chamber itself would be appealed to in vain for a precedent. The terrible Inquisition can alone reward the search. There indeed, one of the modes of proceeding was by denunciation, that is, by secret informations and accusations, received and entertained alike, without any regard to the reputation of the informers ; or by nameless witnesses, never made known to, and never confronted with the accused : so that the latter was totally unconscious of the peril awaiting him ; often received his doom in the peaceful bosom of his family, amidst friends congregated in a gay circle around him, or, like myself, in the cheerful and zealous performance of official duties.

Yes, fellow citizens, it was reserved for the moral, liberal, boasting, self-lauding party, to convert the highest Tribunal of the State into that odious Inquisition, resuscitated from its ashes, which the priest-ridden slaves, trembling at its very name, at length, had courage and virtue enough to abolish. Nor was there wanting a chief ministering Official, prompt, able, and well qualified by past experience, to execute the will of the grand Inquisitor, and force it upon the majority of the Senate, worthy members of a Tribunal, thus transformed and deformed by their own obsequious co-operation. This Official will be easily recognized in the Personage of great and multiform notoriety, as Secretary of the Washington Society, a convicted rioter of Trinity Church ! a deserter of his own party to become the king of the Coodies, and an associate of the so dubbed forty thieves ; a bitter opponent and malignant enemy of Tompkins and Clinton ; the persecutor of his former political friends, the whining hypocrite, stealing his way into Tammany Hall, and issuing thence its representative, first in the Assembly, and then in Congress, where by betraying his trust, he forfeited the confidence of his constituents for ever. His matchless effrontery and meanness in offering new pledges, and soliciting a second nomination, having availed him no farther than to add scorn to the refusal, he turned another somerset back over the fence, and was picked up by his late adversaries just in time to supply them with a candidate for the mayoralty, and be rewarded

for his defeat by a promotion to the Senate of this State, where he figures now as the most conspicuous trumpeter of his new allies; advocates the stimulating principles of their hard cider; and viper-like, stinging the bosom that had warmed him, sits in judgment over his old companions, puts them to the rack, and crowns his history with the involuntary merit of having solved the long pending problem, whether ethics are not indicated by the mirror of politics, and whether the dishonest politician is not always a dishonest man.

This is the chief ministering Official, whose zeal, outstripping the purport of his commission, and overleaping all bounds of decency, pushed him to a point before the Senate which the grand Inquisitor himself, to do him justice, had too much cautiousness to expose! The message was a simple recommendation for removal, unaccompanied by any accusation, and therefore harmless to the moral character of the proscribed. To have stopped here, however, would have been an unequivocal admission of its being a mere party measure, a political movement to get rid of two more obnoxious opponents; the truth of which no one who knows the three Judges, all participating alike in the offence, if offence it be, of naturalizing poor aliens! can doubt for a moment. The two removed were of adverse politics, and the one spared had made his peace with the powers that be, by a recent conversion; the blow fell upon those that remained faithful to their old creed and profession. The sincerity and manliness of such admission during the debate was neither to the taste of the chief Official, nor congenial with his principles, as too clearly indicated by his habitual practice. No wonder, therefore, that he hesitated not to affix a stigma to the dismissed, by base and calumnious aspersions, poured forth from that exalted seat whence nothing but the voice of truth and justice should be heard, and that he should openly abuse his high privileges, to the degradation of himself and the whole Senate. And what is the amount of these charges? The only specific one, which he has volunteered, that of our receiving the oath of a felon, has been already shown to be an unqualified and unmitigated falsehood, admitting of no softer term, and leaving him no refuge in any pretended ignorance of the fact. It was publicly advertised at the time, that Gausman, when he came to be sworn, was a respected Trustee of the church! and that his commission of felony

was a subsequent affair. A copy of the advertisement is hereunto annexed.

As to the vague, general charge of corruption in administering the oath of naturalization, the affidavits hereunto annexed will prove it unfounded, and that our practice in this particular was exactly the same as in all other courts, and that in the admission of testimony we were often more scrupulous than other Judges; that there was nothing in our manner of doing business which was not fair and open, independent of all party distinctions, and in all respects conformable to the laws.

The manner in which the Chief Official and Oracle respecting naturalization addresses the Senate, leads to the obvious conclusion, that he is either ignorant of the law, or that he wilfully perverts it in all its bearings. Whether the first or the second hypothesis be the true one, or whether both are so, any one, who has watched his proceedings, can determine for himself. On the 16th of April last he introduced into the Senate a bill entitled "An Act to diminish the costs, and regulate the practice of the several Courts of this State in administering the naturalization laws."

The 3d section of this bill provides that the alien shall make his declaration, under oath, in open Court, before the presiding Judge of the Court, before he shall be entitled to have his declaration entered of record. The 4th section provides, that the oath to support the Constitution of the United States shall be *administered by the presiding Judge*; that the witness shall be examined by him *orally, in open Court*; and that the testimony shall be entered in the minutes of the Court *by the Clerk* of the Court, before such alien shall be entitled to have his proceedings recorded, and *obtain his certificate of naturalization*.

This bill, had it passed into a law, would have been disregarded by the Courts as unconstitutional, and coming into direct collision with the powers granted to Congress. "Congress shall have power to establish a *uniform* rule of naturalization." Const., art. 1st, sec. 8th. "No State can make a Naturalization Law." Kent. Com. p. 423. "The power is exclusively in Congress." Wheaton, Rep. vol. 2, p. 259. These authorities will suffice. It is very evident, therefore, that the bill in question, by introducing evidence not required by the Act of Congress, and embarrassing to the alien, would have destroyed the *uniform* rule of naturalization; that very rule for *adhering to which we were removed from office*.

By the Act of Congress, May 26, 1824, the alien's declaration, contrary to the above quoted section of the bill, may be made *before the Clerk*, and need not be made in *open Court*, and is entitled to be recorded; and, contrary to the 4th section of the bill quoted, by the Act of Congress, April 14th, 1802, the oath to support the Constitution of the United States may be taken *before* the Court, and is *not required to be administered by* the presiding Judge, but may be administered by the Clerk, as is usual in all Courts; and the Clerk must record the oath; nor is it necessary that the witness should be examined *orally* by the Clerk, before he shall be entitled to have his proceedings recorded, and before he can obtain his certificate of naturalization.

As the law now is, the application of the alien for naturalization is *ex parte* altogether, as much so as an application to obtain a patent, or to have a deed acknowledged; it is a mere motion to the Court, sustained by proof.

It is not necessary that the witness should be present in Court, the applicant being at liberty to produce written proof of his residence, moral character, &c.; which proof, if it embraces the conditions required by the law, not only *entitles* the party to be naturalized, but the Court is *bound*, under their oath of office, to admit him as a citizen of the United States. Judge Concklin, of the United States Court, in his treatise, p. 408, says that "the proofs, oaths, and declarations may doubtless be made upon oral examination, according to the ordinary proceedings in Courts of Law; but the usual, and much more convenient mode, is to bring them before the Court, properly *drawn up in writing beforehand*;" and of course, if satisfactory, they are obligatory upon the Court. In the Marine Court, while we sat there, the witnesses were first examined with a view to have their affidavits filled up; they were then read to the witnesses, and on the day of elections, they were always made out, read, and explained by the Judges themselves. Any attempt to cross examine witnesses, on the part of the spectators, is a gross innovation and encroachment on the rights of the alien, and for this cause was resisted by me at the last election, as shown in a subjoined affidavit. Any suspicion of perjury must be communicated to *the Court*, and from the Court alone must come the examination consequent on such a communication, or, by preferring a charge of perjury to the United States' Grand Jury.

Mr. Verplanck's naturalization bill before the Senate,

should have been entitled, an Act to increase the costs, to embarrass the practice of the several Courts of this State; to destroy the uniform rule of naturalization, and to prevent naturalization altogether. The object of the bill was to produce delay, and shut out, perchance, on the day of election, some three or four hundred aliens from the privilege of citizens. It would have been still more in keeping with the character of partial legislation, and with the principles of the Alien and Sedition Law, and certainly more consistent with a manly and bold course, to have passed at once a law to close our Courts on the day of election. I have no doubt the principal cause of my removal was the hostility of the dominant party to aliens. They have industriously circulated petitions in this city, with the view to repeal the naturalization laws. Instead of five years they ask to substitute *twenty-one years* residence before the alien can become a citizen of the United States. After every election they give exaggerated statements of the number of aliens naturalized in the Marine Court; and last Spring they swelled the amount to twenty-two hundred, when there was scarcely more than a third of that number! They generally allege corruption against the Court, and perjury in the witnesses:—"Certainly, (says one of their papers,) the Legislature should not lose a single week in divesting the Marine Court of the character of a Court of Record; indeed, it would be well to abolish it altogether." At another time, they deny it to be a Court of Record, and of course that it has the power to naturalize. At length, becoming desperate, they march into Court, and endeavour, if possible, to paralyze the laws; take the bold and unprecedented stand of interfering with its proceedings; and the whig Sheriff of the City and County of New York, instead of keeping the peace, becomes its chief violator, by grossly assaulting the officers of the Court!

Fellow citizens, from the overwhelming judgment of the highest, and, with reference to myself, irresponsible, inquisitorial tribunal, there is no appeal but to you. My testimony is laid before you. Bid my accusers to bring forth theirs; and let them not, privileged as they are already, draw additional strength and protection from the darkness of secrecy which covers their proceedings. If they obey, judge between them and me. I challenge them to a trial before you; and to your sentence, whatever it may be, I will bow with submission. If they dare to disregard your summons, shrinking with more fear from the trial than from the offence of

disobedience, you will be at no loss to pronounce on which side lie the guilt, disgrace, official prostration, abuse of authority, violation of law, and profanation of the Constitution. "High, stern, vindictive justice" shall then speak through your voice, and its fiat shall make them a warning, and a "great moral lesson" to faithless public servants ever after.

I put my cause in your hands, from a conviction of its great importance to yourselves. It is mine, so far only as concerns the rescue of my character from unmerited obloquy; but it is yours by every act of insult and outrage, committed through me, upon the principles which form the palladium of your common rights, which point out the land-marks of separation between the executive, legislative, and judicial powers; and which call for your special and unceasing vigilance, in guarding the judiciary against the executive; the least encroachment of this upon the other being a certain commencement of despotism, and an infallible precursor of the downfall of civil liberty. Remember, that one of the chief grievances, set forth in the declaration of our independence against the King of Great Britain, was, "that he made Judges dependent on his will alone for the tenure of their offices."

APPENDIX.

Reference is made to the following "notice" which was published in a daily paper of this city from the 14th May, 1838, to the 4th of June :—

NOTICE.

At a large conference of the German Reformed Church in Forsyth street, it was resolved, that an election be held, according to the rules and regulations of said church, at the Parsonage House, No. 36 Christie street, on (Pinkster) Monday, June 4th, to elect three Trustees for said church, in the places of Messrs. Jacob Wagener, GEORGE GAUSMAN and John Schawb, whose term will then have expired. Those whose names are hereunto subscribed, give notice that an election will take place accordingly.

W. GLENHARD,	}	<i>Trustees.</i>
J. J. MILLER,		
C. SCHAWB,		
J. SCHAFFER,		
J. ATTHOUSE,	}	<i>Elders.</i>
H. KILLINGER,		
J. HOLTMAN,		
M. RUPP,		
C. RIMEHU,	}	<i>Deacons.</i>
J. MARLIN,		
P. BAWER,		
H. WAGENER,		

From the Albany Evening Journal of May 20, 1840.

REMOVAL OF THE JUSTICES OF THE NEW YORK MARINE COURT.

The public attention having been drawn to the subject of the removal of the Marine Court Justices in the City of New York, we have been anxious to obtain a correct statement of what actually took place in Executive Session of the Senate with closed doors. As the injunction of secrecy is now removed, we give on the recollection of one present, whose attention, though he took no part in the discussion, was drawn to the proceedings (and with the aid and correction of another,) what is believed to be substantially an account of the whole transaction.

The Governor, having previously recommended the removal of Justices Scott and Schieffelin, and the recommendation having been referred to the Senators of the 1st District, Messrs. Tallmadge, Verplanck and Furman—Mr. Tallmadge, on the part of the Committee, recommended the removal, stating that the grounds of it appeared perfectly satisfactory to the Committee.

The Committee were called upon for further information by Messrs. Hunter and D. S. Dickinson. Mr. Verplanck, as one of the Committee, said that the business of party rewards and punishments was one in which he had little pleasure; that it was a course of measures arising from the hard necessity of our political condition, and the policy of the former dominant party, to which we were compelled to submit; that his own disposition had always been to diminish and check it as much as possible, but the present was a bold and frank exercise of Executive power for good and just purposes for which he honored the Governor. It was a great moral lesson to unworthy Magistrates—it was a high, stern act of vindictive justice. There had been for many years an open and notorious abuse of the naturalization laws in many courts, but especially and most grossly in this Marine Court in New York. Mr. V. then read from the naturalization acts the requisitions of the law. He then stated that the great practical abuse was, that whilst the law requires evidence of residence, character, &c. satisfactory to the Court, *that* Court does not pretend to judge of evidence, but merely sits for form's sake; while citizens are sworn in without investigation as fast as a clerk can fill up blank certificates and administer oaths. All this is done, said Mr. V., not once or

twice, but in hundreds, perhaps thousands of cases, without inquiry or any real examination of evidence. The clerk is the acting officer, while judges do little more than lend their authority and presence. In this disgraceful scene the foreigner, who has been but a few months on our shores, or is perhaps ignorant of our language, is often an innocent actor; while the first guilt is that of the witness or his prompter. Ought not a still higher censure to fall upon the judges? He said that these abuses had been known and public, and increasing for many years; but they had during and just previous to the last election, been more open, notorious and shameless than ever. He said the facts were of such general notoriety as not to require evidence. He had before him various certificates and affidavits, of which he would read one, not as the main evidence on which he relied, but as an example of the mode in which that Court prostituted its powers and authority.

Mr. Verplanck read an affidavit of a known citizen, stating that he attended that Court during the last election; on which occasion the Court sat not in open Court according to law;—two judges administered oaths and admitted citizens at the same time—and admitting only those who came with tickets—certificates from Tammany Hall—while the Sheriff of the county and other citizens were turned out of doors—the whole oath and admission administered in the most undignified and even unintelligible manner—hardly an examination made—oaths admitted from persons unacquainted with our language, and various other proceedings of a similar and disgraceful character.

Mr. V. then stated that several other papers, now before the Committee, were open to the inspection of the Senate, if required, but he did not regard them as necessary, as the facts were notorious and had been publicly charged and never denied. He observed that thus what should be the solemn act of admitting to citizenship was degraded—the character of our Courts prostrated, the moral guilt of perjury incurred and augmented to a fearful extent. These were to his mind sufficient reasons for the removal.

Mr. Hunter said that this was a new evidence of bitter hostility to the City of New York and its democracy. It was a high handed measure of power for the purpose of providing for expectants for office.

Mr. Edwards followed, and stated that this was an *ex parte* attack, supported only by a single affidavit, which had been

read—that Judges could be only removed for cause—and that the parties should be served with the charges against them.

Mr. Ely remarked, that could he be satisfied that these men had been guilty of what was charged upon them, they ought certainly to be turned out—but held that they were entitled to have notice of the charges.

Mr. Sibley asked how long they had held their offices.

Mr. Tallmadge replied—one for ten or twelve years, and the other beyond the memory of man.

Mr. Sibley replied jocosely, then they should be removed on the principle of rotation in office, which he understood to have been claimed as a cardinal democratic principle. He inquired on what terms these Justices held their offices.

Mr. Tallmadge answered, (briefly referring to the law,) for five years, removable at the pleasure of the Governor and Senate.

Mr. Paige stated that this was a new manner; that it had never been known that persons had been removed before their terms of office had expired; that it was an attempt to increase political patronage, and an arbitrary stretch of executive power. He insisted that the Justices should be allowed to repel the charges thus presented against them, and repeated that this was a new thing in the history of politics with us, to remove officers before their terms had expired.

He then offered a resolution, calling upon the Governor for specific charges, and evidence against the Justices.

Mr. Verplanck rejoined. He said it seemed strange that gentlemen on the other side should assert that such removals before the expiration of the term, was a new thing in our politics. General Jackson had done it many hundred, and perhaps a thousand times. Such, however, had not been the policy of Governor Seward; he had made no removals of officers, except for special cause, of those who held for a term of years, but subject to the pleasure of the Governor and Senate. Half the Surrogates of the State, Masters in Chancery, Notaries, Inspectors, &c., said Mr. Verplanck, held on that tenure. In spite of opposition of politics, this whig administration had removed none of them. It has appointed only after the expiration of the full term of office. Mr. Verplanck said he would not himself, as a Senator, assent to such removals on mere party grounds. This was not such a removal; this was for great and just cause. He said the charge was not made on a single affidavit; that was only read for the infor-

mation of the Senate as to the particular mode in which these men had transgressed. The Committee had other evidence in their possession, and much more within their reach, but it was not adduced from the acknowledged publicity and notoriety of the facts. He had himself made similar charges openly, on the floor of the Senate, at a former session. He had then done it in consequence of facts brought before the public by a trial in the United States Circuit Court for perjury, in obtaining certificates of naturalization in the Marine Court of New York. He had then publicly stated, among other abuses, that citizens had been made by these very Judges by the dozen, on the oath of a convicted felon, whose testimony would have been rejected in any Justice's Court on a question of five dollar consequence. Those charges were reported and printed here and in New York, and were never contradicted. Mr. Edwards had, as Chairman of the Committee on the Judiciary, brought in a bill to remedy these evils; which, for some reasons, (perhaps constitutional difficulties,) never became a law. He repeated, that this was not a removal on party grounds, but a high judicial sentence for notorious public offences. The example of such a removal would have a most salutary effect in purifying the administration of the naturalization laws.

Messrs. D. S. Dickinson and Van Dyck insisted strongly, and at length, that this was an inquisitorial proceeding, covered by the mantle of secrecy. Mr. Van Dyck commented upon the affidavit, as dictated by party spirit, and maintained that the act of removal had never been resorted to by Governor Marcy or his predecessors, since the adoption of the new Constitution. He maintained that the spirit, though not the words, of the Constitution required that the charges should be assigned by the Governor against these Justices as much as in those cases where the Constitution expressly required it. He denounced the act as a new and unwarrantable measure of executive usurpation which he predicted would meet with intense and universal indignation.

Mr. Paige's resolution was then rejected.

After various questions the vote was taken, when the recommendation of the Governor was sustained, 16 to 5. Several questions were taken on filing the affidavits and upon the injunction of secrecy, which it is unnecessary now to

state; the injunction of secrecy having been, on motion of Mr. Verplanck, wholly removed.

City and County }
of New York, } ss.

John M. Bloodgood, one of the Special Justices for the City and County of New York, being duly sworn, deposes and says, that for the last ten years he has been at the Marine Court very frequently with aliens to get their naturalization papers, especially on the days of election, at which times he has seen both political parties bringing up men to be naturalized, all pressing before the Court for preference, and this deponent has always seen great impartiality and circumspection in investigating the testimony. He, this deponent, has frequently seen aliens belonging to both political parties, rejected on investigation by the judges, of the length of residence required by law not being satisfactory. The course pursued by the said judges when this deponent was present, was to examine the witnesses as to the residence of the applicants, and to explain the same to said witnesses.

(Signed)

J. M. BLOODGOOD.

Sworn before me, June }
 25th, 1840. }

E. STEVENS.

City and County }
of New York, } ss.

John A. Stemmler, of said City and County, Attorney and Counsellor at Law, being duly sworn saith, that he has attended the Court of Common Pleas, the Superior and the Marine Courts of the said city, in relation to naturalization, for about five years past, and until the year 1838—that he is familiar with the laws of naturalization, and the mode of proceedings in said Courts relative thereto, that he has always observed that the Marine Court was particular and cautious in the examination of the witnesses produced on such occasions, and in every investigation necessary to enable the

Court to judge of the character and the residence of the alien.

This deponent further saith, that the affidavits were filled up and read to the witnesses in an audible and distinct manner, who were interrogated by the judges as to the statements contained therein; and found, that the said Court acted always with the most scrupulous impartiality in administering the naturalization laws. This deponent further saith, that he has seen persons naturalized in the above named Courts on orders or tickets emanating from both political parties; and also that aliens were rejected by the Marine Court for want of sufficient testimony and oath to the witnesses and applicants in said Court. That in the Superior Court and in the Court of Common Pleas the oath of allegiance was always administered and read by the clerk or crier of said Courts, that the judges were generally engaged in trying causes, and the clerk or crier went through with the forms—and that he has seen aliens naturalized at the chambers of the judges of the Court of Common Pleas.

(Signed) JOHN A. STEMLER.

Sworn before me, this 25th day of {
June, A. D. 1840. }

ROBT. H. BOGARDUS, Com. of Deeds.

City and County } ss.
of New York, }

William Shaler, of the aforesaid city, Attorney and Counsellor at Law, being duly sworn, deposes and says, that he has attended to suits at law in the Marine Court in the City of New York since about the year 1826 or 1827—that for many years he was in daily attendance in said Court—that Justices Scott and Schieffelin officiated in said Court during greater part of said period, and that the deponent has had the best opportunities in observing the conduct and acts of the said Justices in their said offices for many years, having witnessed the naturalization by them of hundreds of applicants for citizenship—that on one occasion, as deponent believes about a year ago, he assisted the said justices during an election, for three entire days, in their duties of naturalizing by filling up the necessary documents preparatory

to their being submitted to the action of the said Court, and also by interpreting when necessary.

Deponent further says, that during an election, it is necessary in said Court owing to the number of applicants for citizenship, to make systematic and rigid arrangements for preparing the documents, and for the ingress and egress of persons, so as to expedite business and prevent confusion—that deponent has at all times known that no act of naturalization in said Court took place except in open Court, that he has often heard Mr. Barberie, the Clerk of said Court, inform persons who applied to him early in the morning to be naturalized, that they must wait until 10 o'clock, when the Court opened, and that the deponent never knew any instance to the contrary.

Deponent further says, that from close observation (which he has had a very favorable opportunity to make) during many years, he fully believes, that the judges aforesaid have at all times acted with integrity and a conscientious anxiety to discharge their duty with purity and fidelity, to the strictest rules of law and right—and he knows in no degree of any thing to the contrary. That as regards the deposition of some individual (as yet unknown to the public) which was used by Senator Verplanck in the Senate of this State, in support of the recommendation of the Governor to remove the said Justices, deponent solemnly believes the same to be untrue, and (if given in good faith) in all probability to be made by some individual ignorant of legal proceedings, and blinded by party excitement; and further deponent says not.

(Signed)

WILLIAM SHALER.

Sworn before me, this }
24th June, 1840. }

RICHARD REED, Com. of Deeds.

City and County } ss.
of New York,

John Jacobs, being duly sworn, doth depose and say, that for several years he has been a messenger of the Marine Court, that on the day before the day of the last election, he was placed by order of Judge Schieffelin at a side door which communicates with the two rooms fronting on Broadway.

The order was to prohibit any person from passing through that door, except the judges and officers of the Court: there was a free passage into all the rooms without this door, which had been frequently, before this time, closed entirely with a spring lock, the judges and officers having keys to pass through. That while the deponent was placed at this door, Sheriff Acker came to the door, and attempted to pass through into the front room; I told him my orders were to let no person pass through that door; he then took me by the collar and attempted to pull me from the door by force, and said he would go through; after scuffling with me to force his way through, I appealed to Judge Scott, who told him "he could not pass through; that, if he wished to go out of Court, there were two other passage ways, one leading through the library, and the other through the gate," which led to the front door, which gate was part of the railing to keep off the crowd. The Sheriff then went out of Court. This deponent further saith, that the Court was not closed, but open, and there was a free passage into all the rooms, and no person was impeded more than is usual in Courts where many are assembled, and what was necessary to keep order. The Sheriff was not turned out of doors, nor any other person. The Clerk did not administer the oaths to the witnesses, or the oath of allegiance—but they were administered by the Judges, in a distinct and audible voice, and always explained. This deponent further saith, that a young man by the name of Lawrence stood by Judge Scott, inside of the railing: he constantly interrupted the Court by asking questions of the aliens who presented themselves for naturalization, while the Court were administering the oaths: he was repeatedly told to be quiet: refusing, he was ordered on the outside of the railing where this deponent stood, and within a few feet of the Judge. The said Lawrence passed a second time inside of the railing, and took his station close to the Judge's elbow, and insisted "he would stay there, that it was open Court, and he would ask as many questions as he pleased." The Judge said, "Yes, Sir, it is open Court, you may stand within two feet of me, but on the outside of the railing where you can see and hear; it appears, Sir, you have no regard due to a Court of justice, or any respect for religion, otherwise you would not interrupt me when I am administering the oaths. I am determined you shall not interrupt the proceedings of this Court." The Judge again ordered him out, told him if he did not go he would commit him for contempt.

The said Lawrence then passed on the outside of the railing. This deponent further saith, that on the day of election, he saw Judges Scott and Schieffelin frequently refuse to naturalize aliens for want of sufficient testimony; that he saw many pay for their certificates of naturalization in money and not in tickets—and frequently those that had tickets were rejected. And this deponent further says, that the Sheriff is not an officer of the Marine Court, nor does he serve any process issuing out of the said Court.

(Signed)

JOHN JACOBS.

Sworn before me, this }
4th June, 1840. }

JOHN BARBERIE, Clerk of the Marine Court.

City and County } ss.
of New York, }

Arnold C. Higgins, being duly sworn, doth depose and say, that he is one of the Marshals of the City and County of New York, and has attended the Marine Court about a year past; that on the day of the last election, and the day before, he attended the Court during the whole time it was in session. The three Judges were present, and they uniformly filled up the affidavits of the witnesses, first inquiring of them the knowledge they had of the applicants who applied for naturalization; the witnesses then signed the affidavits, after which they were read, and explained to them, before they were sworn. And in no instance the Clerk of the Court administered the oaths, either to the witnesses or the applicants; he was engaged in making out certificates of naturalization. There appeared always a minute examination of the evidence by the Court. This deponent further says, that when the witness or applicant appeared ignorant of the English language, a translator was called to translate. This deponent further says, that the Court was not closed at any time during the session of the Court, but open to all persons that had business with the Court, and to the spectators; and there was a full opportunity for every body to see and hear all that was passing; that Judges Scott and Schieffelin were in one room on the day of election, and Judge Hammond in another; that all *three* of the Judges received tickets from Tammany.

Hall ; that many were naturalized without tickets, who paid the money. The applicants were frequently rejected for want of sufficient testimony ; those that had, as well as those that had not, tickets ; by all the Judges. This deponent was placed at a gate, that formed part of the railing extending across the middle of the room, to keep off the spectators, or others, pressing upon the Clerk's desk ; that Sheriff Acker, who was inside of the railing, in the Court room, came to a side door, which at one time had been used as a private door for the Judges and officers of the Court. Mr. John Jacobs was placed at that door, with orders from the Court to permit no person to pass through. The Sheriff insisted he would go through that door, and he said he would go no other way out of Court. He was informed by Mr. Jacobs and this deponent, of the orders of the Court if he wished to go. He violently seized Mr. Jacobs by the collar, or shoulders, and endeavoured to force him away from the door ! Mr. Jacobs resisted, and in his turn took him by the collar, and appealed to the Court. Judge Scott repeated to the Sheriff the orders of the Court, and told him he should not pass through the side door ; that he might go through the gate to the front door, or through the library. The Sheriff was not turned out of doors, but had free permission to pass into all the rooms, except through the side door as aforesaid ; that no other citizen was turned out of doors. This deponent further says, that a young man by the name of Lawrence, stood inside of the railing enclosing the Clerk's desk ; he constantly interrupted the proceedings of the Court, by asking questions of the witnesses and aliens making application for naturalization. He was checked several times by Judge Scott, who requested him to be quiet, and not to interrupt the Court ; this he repeated while the Court was administering the oaths. At length he was ordered on the outside of the railing, within a few feet of the Court. In a short time the said Lawrence again took a place within the railing, at the elbow of Judge Scott, insisted he would be there and ask as many questions as he pleased ; said it was open Court. The Judge told him he should not disturb the proceedings of the Court, and told him if he did not go out of the enclosure he would commit him for contempt of Court. The deponent was called upon to execute the orders of the Court if he did not obey. He passed on the outside of the Clerk's enclosure, and stood within a few feet of the Court, where he could see and hear. And this deponent

further saith, that the conduct of the said Sheriff and the said Lawrence was riotous and insolent in the extreme, and from all that he saw he can have no doubt they came into Court with the view of interrupting its proceedings.

(Signed)

A. C. HIGGINS.

Sworn before me, this }
3d June, 1840. }

JOHN BARBERIE,

Clerk of the Marine Court.

City and County } ss.
of New York, }

Simon P. Huff, being duly sworn, doth depose and say, that he attended the Marine Court some two or three days, at and before the last Spring election, when the Court was open for naturalization; that he has read the affidavit of Arnold C. Higgins; that it is all substantially true, and detailed, as the facts took place, except so far as it respects the Sheriff's conduct, which he knows nothing of his own knowledge; which took place, as he understands, at a time when this deponent was absent.

(Signed)

SIMON P. HUFF.

Sworn this 3d day of June, }
1840, before me, }

J. D. WHEELER,

Commissioner of Deeds.

City and County } ss.
of New York, }

Elisha Morrill, of the said city, Counsellor at Law, being duly sworn, says, that for several years past deponent has been in the habit of attending the several Courts of Record in this city, for the purpose of having alien residents naturalized; that he has professionally attended the Superior Court, the Court of Common Pleas, and the Marine Court, for such purpose; that the course pursued in the Superior

Court and Court of Common Pleas, to determine the identity and qualifications of applicants for naturalization, is in the same form and manner as in the Marine Court; that deponent knows, from his own experience, that the late Judges of the Marine Court, Scott and Schieffelin, in the examination of the claims of applicants for naturalization, always exercised as great care and scrutiny as was usual with other Courts; and that deponent has frequently known the aforesaid Judges to have refused and denied applicants on the ground of insufficient testimony. And further, deponent says, that he attended the Marine Court on the last charter election, and on the day previous thereto, and was present when the difficulty happened between the door keeper, or messenger, and Jacob Acker, Sheriff; that the deponent saw Mr. Acker approach the door where said messenger was stationed, and attempt to pass through, when said messenger said to him, "this door is closed, and I have orders from the Court to let no one go through;" that he again attempted to force a passage, and forcibly pushed the said messenger from the door, when the said messenger appealed to the Court for protection; this deponent, being near Mr. Acker, spoke to him and said, "you had better go through this way, there is no need of making a disturbance here;" He only replied, "I will go through this door." Judge Scott then spoke to the Marshals and said "clear a passage for the Sheriff to pass out;" and that after a short time, Mr. Acker left the Court. And further, that during the day of election the Marine Court was very much crowded, and required the greatest exertions of the officers in attendance to preserve order and direct the proper passages for the ingress and egress to and from the Court rooms. And further, that the door through which Mr. Acker attempted to make a passage, was not usually opened for admitting any persons, but kept for the convenience of the Court and officers in attendance.

And further, that the said Judges always read the oaths to applicants for naturalization, and cautioned them against swearing falsely, and the deponent has frequently, during the day of the election in April last, and previous thereto, seen applicants who were naturalized by Hammond, Scott, and Schieffelin, Judges of the said Court, who were presiding at the same time, and the deponent has observed that applicants with orders, were as frequently refused as others who came with money, and that deponent has seen many persons naturalized, who brought money, and without any order or tickets.

And further, that the said Marine Court, during all the time the deponent was there, was, as he believes, regularly organized, and all the proceedings deponent considered as being done in open Court.

And further, during all the day of the election aforesaid, no oath or affirmation was administered to any person unacquainted with the English language, without first being carefully interpreted and explained, and that very few persons made application to said Court during said day who were not familiar with our language, and that an interpreter was present during the said day of election.

(Signed)

ELISHA MORRILL.

Sworn, 4th June, 1840, }
before me, }

JOHN BARBERIE,

Clerk of the Marine Court.

*City and County } ss.
of New York, }*

Abraham V. Barberie, being duly sworn, doth depose and say, that he has been the Assistant Clerk of the Marine Court for about two years last past, that he has never seen any abuse of the naturalization laws. He has been very constant in his attendance in the Clerk's office, owing to the bad health of his father, the Clerk, that in every instance that came within his knowledge during that time, the affidavits proving the residence and character of the aliens were read and explained, and in case the witness did not understand the English language, an interpreter was first sworn, to truly interpret, and did interpret the oaths:—that the oaths to the witnesses, and the oaths of allegiance were always read in presence of the Court, that, in ninety-nine times out of the hundred, the oaths were read by one of the Judges, and if by the Clerk, which rarely ever happened, it was by the Court's direction, and their evidence always judged of by them upon strict examination. That on the days of election, the oaths were always administered by the Judges, and the Clerk did nothing but fill the certificates, that the Judges also filled up the blank affidavits according to the case detailed to them; on inquiry first made of the witnesses; and if the answers

were not satisfactory, they were rejected—and he has known many to be rejected.

And this deponent further says, that the Court admitted all aliens that they considered qualified, without regard to party; that many paid money for their certificates of naturalization, and others presented tickets from Tammany Hall, or orders, on which the money was afterwards received by the Clerk, that many presenting tickets from Tammany Hall were rejected, not producing sufficient proof; that the oaths were always administered in a distinct and audible voice. This deponent further says, that a young man by the name of Lawrence, on the day before the day of election, interrupted the proceedings of the Court—he stood by the side of Judge Scott, and interfered with the naturalization in asking many questions of the aliens assembled, while the Judge was administering the oaths; he was told to be quiet; at length he was ordered out, not of the room, but on the outside of the railing, which extends across one part of the room to keep the crowd off—soon after, he came in a second time, and commenced again to disturb the Court, until he was again turned out. This deponent further saith, that all the doors in the Court room were open, except the side door leading between the two front rooms. This deponent further says, that the Sheriff is not an officer of the Marine Court, and does not serve any process issuing from the said Court; that he heard some affray took place with him—that he is positive that there was a free passage for all persons wishing to pass in and out of the Court rooms, for there were hundreds constantly coming in and going out of the said Court, and further this deponent saith not.

(Signed)

A. V. BARBERIE.

Sworn before me, this {
30th of May, 1840. }

JOHN BARBERIE,

Clerk of the Marine Court.







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